

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Thomas J Stedronsky

No. 18F-H1817016-REL

4 Petitioner,

5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6
7 Copper Canyon Ranches POA

8 Respondent.

9
10 **HEARING:** January 10, 2018, at 9:00 a.m.

11 **APPEARANCES:** Thomas J. Stedronsky ("Petitioner") appeared on his own
12 behalf; Copper Canyon Ranches POA ("Respondent") was represented by John S.
13 Perlman, Esq.

14 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky
15

16 **FINDINGS OF FACT**

17 **BACKGROUND AND PROCEDURE**

18 1. The Arizona Department of Real Estate ("the Department") is authorized by
19 statute to receive Petitions for Hearings from members of planned community
20 associations in Arizona.

21 2. Respondent is a property owners' association whose members own parcels in
22 Copper Canyon Ranches, a rural development consisting of 194 large multi-acre
23 parcels located in the hills north of Globe, Arizona.

24 3. In approximately 2003, Petitioner purchased Lot 76, an unimproved 15-acre
25 parcel in Copper Canyon Ranches. Based on his ownership of Lot 76, Petitioner is a
26 member of Respondent. Petitioner has not built any structures on or otherwise
27 improved Lot 76 and he does not reside at Copper Canyon Ranches.

28 4. On or about October 23, 2017, Petitioner filed a single-issue petition with the
29 Department that alleged that Respondent had violated several of its Covenants,
30 Easements, Conditions and Restrictions ("CC&Rs") in several respects.

1 5. Respondent filed a written answer to the petition, denying that it had violated
2 any CC&Rs. The Department referred the petition to the Office of Administrative
3 Hearings (“OAH”), an independent state agency, for an evidentiary hearing.

4 6. The Administrative Law Judge issued an order noting that although
5 Petitioner had only paid \$500.00 for a single issue petition, he appeared to be raising as
6 many as three issues. In response to the order, Petitioner paid another \$500.00 to the
7 Department, which informed OAH that Petitioner wanted the following two issues to be
8 adjudicated at the hearing:

- 9 1. Whether the Respondent has maintained the roadway
10 Sundance Lane properly [.]
- 11 2. Whether Respondent has taken appropriate action
12 against the owner of lot 77 in as much as that property
13 allegedly resembles a junk yard.¹

14 7. A hearing was held on January 10, 2018. Petitioner submitted nine exhibits
15 and testified on his own behalf. Respondent submitted one exhibit consisting of multiple
16 documents and presented the testimony of Joe Wilson, its Board’s president.

17 **HEARING EVIDENCE**

18 **Respondent’s Maintenance of Sundance Lane**

19 **Referenced CC&Rs**

20 8. The recitals of the CC&Rs state that they “should be construed in such a
21 manner to be for the purpose of enhancing, ensuring, and protecting the value,
22 attractiveness, quality, development and mutual beneficial use of the Property, and
23 every parcel and part hereof”²

24 9. Section 1.15 of the CC&Rs define “Roadways” as “all roads and rights of way
25 which, pursuant to this Declaration, the Association owns, or is obligated to maintain.”³

26 10. Section III of the CC&Rs includes among Respondent’s powers the right and
27 authority to perform the following acts:

- 28 (b) Take such acts or actions as are necessary, in the
29 reasonable discretion of the Members, for the betterment of

30 ¹ The Department’s November 27, 2017 email contained in OAH’s electronic file.

² Petitioner’s Exhibit A at 2.

³ *Id.* at 3.

the Property and for the general benefit and welfare of the owners, all in accordance with the purposes of the Association;

. . . .

(d) Grade and maintain the roadways as needed, provide for proper drainage of roadways, install culverts where necessary;

. . . .

(k) Employ and coordinate the services of employees, supervisors, management agents, accountants and other persons necessary or appropriate to carry out the operation and maintenance of the roadways and its function as the Architectural Control Committee; [and]

. . . .

(m) Subject to the provisions of this Declaration, maintain, care for, and otherwise manage the roadways including but not limited to the performance of labor and supervision and maintenance services, maintenance of the roadways in as good condition (deterioration loss by damage due to environmental occurrences which cannot be reasonably avoided or insured against excepted).⁴

Parties' Evidence on Respondent's Maintenance of Sundance Lane

11. Petitioner submitted a drawing that showed a map of the Copper Canyon Ranches development.⁵

12. Petitioner acknowledged that the map did not show steep grades or other topographic features. Petitioner also acknowledged that his Lot 76 and adjacent Lot 77, located immediately to the southwest of Lot 76, were located at the top of a hill.

13. Petitioner submitted an excerpt from a plat for Copper Canyon Ranches that stated "Roadbed 8" Native Gravel Fill Compacted to 95% Maximum Density over Subgrade Compacted to 100%."⁶ Petitioner acknowledged, however, that the plat was preliminary, that the copy submitted was undated and unsigned, and that the plat did

⁴ *Id.* at 5-6.

⁵ See Petitioner's Exhibit B.

⁶ See Petitioner's Exhibit C.

not state a requirement that bound Respondent or that could be enforced by the Department.

14. Petitioner also submitted photographs that he had taken of various roadways in Copper Canyon Ranches that he had taken in September 2017.⁷

15. Petitioner's first five photographs showed Black Peak Parkway, which comes off toward the northwest from Copper Hills Road, the only access road into the development.⁸ The photographs show a wide, well-graded, dirt road.

16. Petitioner acknowledged that that the southwest end of Sundance Lane connects with Black Peak Parkway, that the junction of Sundance Lane and Black Peak Parkway is well-maintained, that Sundance Lane climbs steeply from the junction with Black Peak Parkway to his Lot 76, and that as Sundance Lane climbs, the land becomes rockier. Petitioner acknowledged that he usually is able to drive his passenger car to his Lot 76 from the southwest junction of Sundance Lane with Black Peak Parkway.

17. Petitioner acknowledged that his photographs of Black Peak Parkway showed washboard conditions. Petitioner testified that his complaint about Sundance Lane did not involve washboard conditions.

18. Petitioner's next three photographs show Copper Hills Road, which provides the only access into Copper Canyon Ranches.⁹ The first photograph shows a blacktop road.¹⁰ The second and third photographs show a wide, well-graded dirt road with built up shoulders and a drainage ditch running along both sides.¹¹

19. Petitioner acknowledged that at least a portion of Copper Hills Road is maintained by the county and is not Respondent's responsibility.

20. Petitioner's next five photographs showed the middle of an unnamed road running northeast from Copper Hills Road to the west, to join Sundance Lane at its northeast end.¹² The photographs show a wide, well-graded, dirt road with drainage ditches along some portions.

⁷ See Petitioner's Exhibits C1 – C16.

⁸ See Petitioner's Exhibits C1 – C5.

⁹ See Petitioner's Exhibits C6 – C8.

¹⁰ See Petitioner's Exhibit C6.

¹¹ See Petitioner's Exhibits C7, C8.

¹² See Petitioner's Exhibits C9 – C13.

1 21. Petitioner acknowledged that he did not submit photographs of the unnamed
2 road near its junction with Sundance Lane. Petitioner acknowledged that the
3 photographs that he submitted of the unnamed road showed only the beginning of the
4 steep hill on which his Lot 76 and adjacent Lot 77 are located, not the junction with
5 Sundance Lane.

6 22. Petitioner's next two photographs show Sundance Lane where it runs by his
7 Lot 76 at the southwest and northwest corners of the parcel.¹³ The photographs show a
8 barely visible road running along the side of a steep hillside that is overgrown with
9 vegetation and has a large number of large boulders.

10 23. Petitioner testified that he needed to rent a four-wheel drive truck to access
11 his Lot 76 from the northeast on the unnamed road in September 2017. He took the
12 other photographs using his car for access in December 2017.

13 24. Petitioner acknowledged that he chose not to photograph the portion of
14 Sundance Lane between its junction with Black Peak Parkway and Lot 76. He
15 acknowledged that Sundance Road deteriorated as it climbed the hill where his property
16 is located near the top.

17 25. Mr. Wilson has been Respondent's president since 2014, when the previous
18 president resigned. He and his wife and family live full-time in Copper Canyon Ranches
19 and he drives the roadways daily. Mr. Wilson does not drive Sundance Lane regularly
20 because he does not need it for ingress or egress from his property. Mr. Wilson
21 testified that he is familiar with Sundance Lane.

22 26. Mr. Wilson testified that Sundance Lane is an old two-track mining road from
23 the 1940's or 1950's that has never been engineered that is too steep to be a perfect
24 road. He used four-wheel drive to access the north part of Sundance Lane and it was
25 rough, but not impassable.

26 27. Mr. Wilson testified that the photographs of the north end of Sundance Lane
27 that Petitioner took in September 2017 were a fair representation of how the roadway
28 looked at that time. Mr. Wilson explained that the monsoon storms cause erosion and
29 vegetation growth on the roadways that no residents use.

30

¹³ See Petitioner's Exhibits C14 – C15.

1 28. Mr. Wilson testified that the full-time resident who lives on Lot 77 usually
2 accesses his property from the south on Sundance Lane. There are no residences that
3 require access from the north side of Sundance Lane. Mr. Wilson testified that
4 Petitioner could access Lot 76 from the south side of Sundance Lane at any time.

5 29. Mr. Wilson testified that Respondent tries to blade every roadway in Copper
6 Canyon Ranches at least twice a year. Sometimes Respondent performs dozer work
7 on the worst roadways, including the north part of Sundance Lane, and then blades it.
8 Respondent bladed Sundance Lane in September 2017, and December 2017.¹⁴

9 30. Mr. Wilson testified that in December 2017, he photographed conditions on
10 Sundance Lane. He did not have to use four-wheel drive to get from the south end of
11 Sundance Lane to the top of the hill, where Lot 77 and Petitioner's Lot 76 are located.
12 The photographs that Respondent submitted show that Sundance Lane at the top of the
13 hill is graded and passable, although it is still more primitive than Black Canyon
14 Parkway and Copper Hills Road and large rocks still can be seen.¹⁵ Respondent also
15 submitted photographs of the north end of Sundance Lane that Mr. Wilson took on
16 January 9, 2018, which showed a passable level roadway without vegetation.¹⁶

17 31. Mr. Wilson testified that property owners pay Respondent a \$250 annual
18 assessment per parcel. Since many of the 194 parcels are unimproved and
19 unoccupied, some parcel owners do not pay the assessment. Mr. Wilson testified that
20 approximately 35 parcels contain improvements that allow owners to be full-time
21 residents. Approximately 45 parcels have structures on them, including homes, wells,
22 sheds, and so on. Mr. Wilson testified that Respondent receives between \$35,000 and
23 \$40,000 per year in assessments.

24 32. Mr. Wilson testified that it costs between \$7,000 and \$10,000 to blade the 20
25 miles of roadways in the Copper Canyon Ranches development, or between \$15,000
26 and \$20,000 per year. In addition, Respondent must pay to install and maintain
27 culverts, place backfill to address washboard conditions on the roadways, and to dig
28 and maintain ditches for drainage.

29
30 ¹⁴ See Respondent's Exhibit 1 at 2.

¹⁵ See Respondent's Exhibit 1 at 5.

¹⁶ See Respondent's Exhibit 1 at 3.

1 33. Mr. Wilson testified that Respondent's board has made a decision to
2 prioritize maintenance of roads that full-time residents need to access their parcels.
3 Respondent uses its limited funds to better maintain and improve the more travelled
4 roadways. If a parcel has a residence on it, access becomes a higher priority.

5 34. Mr. Wilson testified that if Respondent decided to pave all 20 miles of
6 roadways in Copper Canyon Ranches, it would cost millions of dollars. Each parcel
7 owner would have to pay a \$50,000 assessment to generate even \$1 million. Mr.
8 Wilson opined that the burden on parcel owners to improve all the roadways for year-
9 round easy access is too high.

10 35. Mr. Wilson acknowledged that Respondent did not blade any of the
11 roadways between September 2012 and March 2014 because it spent substantial
12 money to install concrete aprons on Black Peak Parkway, which many residents must
13 use to access their homes.¹⁷

14 **Condition of and Respondent's Actions against Lot 77**

15 **Referenced Bylaws**

16 36. .Section VI of Respondent's CC&Rs include the following Use
17 Restrictions:

18 6.02 Trash Removal. No Property Owners shall allow
19 or cause to be allowed within the boundaries of his Property
20 an area for collection or storage of any garbage, trash,
21 rubbish, or refuse of any kind except in a sanitary container.
22 All such material shall be removed by the Owner on a
23 regular basis or destroyed in a manner satisfactory to county
24 regulations.

25 6.03 Storage. Up to five percent (5%) of a Parcel
26 area may be used for unenclosed storage of items
27 necessary for operation and maintenance of the household
28 or other permitted activities, provided that such storage be
29 maintained in a neat and orderly manner. Such storage
30 shall be maintained a minimum of 100 feet from the nearest
property line; provided, however, that this distance may be
waived by mutual written agreement by adjacent Property
Owners or if the adjacent Property is shielded by an opaque
fence or wall a minimum of six (6) feet in height. Nothing in

¹⁷ See Respondent's Exhibit 1 at 2 (Respondent's answer to petition).

1 this section shall be construed to restrict the storage of
2 firewood for use by the occupants of the premises.

3 6.04 Inoperable Vehicles and Equipment. The 100
4 foot side and rear yard set back shall not be used for repair
5 or storage of inoperable motor vehicles or equipment; nor
6 shall there be permitted the repair or storage of more than
7 one unregistered, inoperable motor vehicle within the
8 property boundaries.

9 6.05 Hazardous Materials and Nuisances. No
10 hazardous material shall be used or stored in such a manner
11 as to constitute a fire or explosion hazard or cause to be
12 emitted into the atmosphere smoke, soot, dust, radiations,
13 odors, noise, vibration, heat, glare, or toxic fumes to such
14 extent as to constitute a nuisance, or to such an extent as to
15 cause pollution of the ground water, or in any manner to
16 violate applicable laws. . . .¹⁸

13 **Parties' Evidence on Condition of and Respondent's Efforts Regarding Lot 77**

14 37. Petitioner submitted photographs that he had taken of Lot 77 from the
15 south part of Sundance Lane and the southwest corner of his Lot 76 in September
16 2017.¹⁹ The first photograph was a long shot of the garage on Lot 77 with several
17 vehicles around it, but showed no apparent violations of Respondent's CC&Rs.²⁰ The
18 second photograph showed a close-up of rocks and a tire in the foreground.²¹ The third
19 photograph showed a close-up of two vehicles with their hoods up and notations about
20 the vehicles that were not apparent in the photograph (i.e., "No engine or trans or front
21 end," "No taillights or License flat tires," and "All vehicles have been sitting for years.").²²
22 The fourth photograph showed a close-up of a recreational vehicle.²³ The fifth and sixth
23 photographs showed close-ups of vehicle or mechanical parts near the garage and
24 driveway on Lot 77.²⁴ The seventh photograph showed a close-up of three vehicles
25 around the garage on Lot 77 and notations about the vehicles that were not apparent in

26 ¹⁸ Petitioner's Exhibit A at 9.

27 ¹⁹ See Petitioner's Exhibit I.

28 ²⁰ See Petitioner's Exhibit I1.

29 ²¹ See Petitioner's Exhibit I2.

30 ²² See Petitioner's Exhibit I3.

²³ See Petitioner's Exhibit I5.

²⁴ See Petitioner's Exhibit I5, I6. Petitioner testified that Lot 77's driveway is better maintained than the adjacent portion of Sundance Lane.

1 the photograph (i.e., "Plastic and Plate not real license plate" and "Expired Plate."²⁵ The
2 eighth photograph showed a close-up of Lot 77's garage with two vehicles, one of which
3 had its hood up, and the notation, "Unknown number of vehicles behind."²⁶ The ninth
4 photograph showed a a close-up of a backhoe, a hoisting machine, a pickup, and a
5 trailer with the notation, "numerous vehicles with flat tires," which were not apparent on
6 the photograph.²⁷

7 38. Petitioner testified that the owner of Lot 77, Jerry Hamlin, was building
8 his house and garage when Petitioner purchased Lot 76. Petitioner testified that he had
9 not spoken to Mr. Hamlin for 15 years.

10 39. Petitioner acknowledged that the CC&Rs require a buffer zone and that
11 Mr. Hamlin is moving his vehicles further into Parcel 77, away from Petitioner's Lot 76.
12 Petitioner acknowledged that he used a telephoto lens to take all but the first
13 photograph that he submitted. He testified that he never had a chance to count all the
14 vehicles on Lot 77.

15 40. Petitioner acknowledged that he filed numerous complaints about Lot 77
16 to Respondent and to Gila County. Respondent submitted a Motion to Dismiss filed in
17 the Gila County Community Development Division in Case No. CG1212-002 on
18 November 6, 2013, against Jerry W. and Helen Hamlin, filed by the Code Enforcement
19 Officer, stating that "having inspected the property and having determined that said
20 property is no longer in violation of Gila County Zoning Ordinances," requesting that the
21 complaint be dismissed without prejudice.²⁸

22 41. Respondent submitted a photograph of the same area as Petitioner's
23 second photo that showed the tire shown in Petitioner's second photograph had been
24 removed.²⁹ Respondent also submitted a long view of the garage on Lot 77 that was
25 similar to Petitioner's first photograph that showed no apparent violations of the
26 CC&Rs.³⁰ Mr. Wilson testified that he took the photographs the day before the hearing
27 without a zoom or telephoto lens.

28 ²⁵ See Petitioner's Exhibit I7.

29 ²⁶ See Petitioner's Exhibit I8.

30 ²⁷ See Petitioner's Exhibit I9.

²⁸ Respondent's Exhibit 1 at 6.

²⁹ See Respondent's Exhibit 1 at 5.

³⁰ See *id.*

1 42. Petitioner submitted a hand-drawn plan that was not drawn to scale to
2 show where he testified he intended to build a house on Lot 76, which was adjacent to
3 the garage on Lot 77.³¹ Petitioner acknowledged that he could not have placed the
4 proposed house on Lot 76 any closer to Lot 77's garage.

5 43. Petitioner testified that he believed the vehicles might be leaking oil and
6 other fluids into the ground, potentially polluting the groundwater. Petitioner
7 acknowledged that he was not sure because he was not willing to trespass onto Lot 77
8 to make sure.

9 44. Mr. Wilson testified that he does not think vehicles or trash on Lot 77
10 affects the groundwater because the well on Lot 77 is below the garage.³²

11 45. Mr. Wilson testified that Petitioner has filed numerous complaints with
12 Respondent about Lot 77, going back years. Mr. Wilson testified that Respondent has
13 written letters to Mr. Hamlin and that he removed vehicles from Lot 77. Mr. Wilson
14 testified that Mr. Hamlin also cleaned up Lot 77 in response to Gila County's
15 enforcement action. Mr. Wilson testified that he met Mr. Hamlin four or five years ago to
16 discuss Petitioner's continuing complaints. Mr. Hamlin had stated that he had
17 cooperated with Respondent and Gila County to resolve their concerns and that he was
18 tired of being hassled by Petitioner.

19 46. Mr. Wilson testified that Mr. Hamlin stated that all the vehicles on Lot 77
20 were operable and that he took Mr. Hamlin at his word. Mr. Wilson explained that
21 vehicles are frequently parked with their hoods open in rural areas because mice and
22 rats are present and keeping the hoods up keeps vermin from nesting.

23 47. Mr. Wilson testified that if he knew what steps to take to make Mr.
24 Hamlin make his property look better, he would have taken such steps. Respondent
25 has no mechanism for enforcing the CC&Rs; all it can do is write letters and, after a
26 parcel owner has failed three times to comply, lien the property. Mr. Wilson testified
27 that Respondent and the county have taken appropriate action to cause Mr. Hamlin to
28 clean up Lot 77. Mr. Wilson testified that Respondent's CC&Rs mirror Gila County's
29 zoning requirements. Mr. Wilson testified that Respondent does not want to go after Mr.

30 ³¹ See Petitioner's Exhibit H.

³² See Petitioner's Exhibit I1 (dome on photo).

1 Hamlin with a heavy hand if zoning violations are not particularly egregious because Mr.
2 Hamlin is the sort of man who would dig in his heels. If Mr. Hamlin is pushed beyond
3 the point where Lot 77 needs to be in compliance with the zoning code and CC&Rs, he
4 will resist and Respondent will incur litigation costs that will decrease the amount of
5 money available for road maintenance.

6 **Petitioner's Efforts to Sell or Plans to Improve Lot 76**

7 48. Petitioner testified that fifteen years ago, when he purchased Lot 76,
8 Sundance Lane looked good. Petitioner testified that he paid between \$2,000 and
9 \$3,000 an acre, a total of more than \$40,000 but less than \$50,000 for Lot 76.

10 49. Petitioner testified that his health is poor, which prevents him from
11 accessing Lot 76 on foot, but that his health permitting, he would like to build a house
12 on Lot 76.

13 50. Mr. Wilson testified that it would be difficult to build on Petitioner's Lot 76
14 because there is no level place on which to construct a building pad and building a
15 driveway on such a steep rocky parcel would be challenging. Preliminary preparation
16 would require a significant amount of bulldozer work.

17 51. Petitioner testified that he had gotten estimates to build on his Lot 76 and
18 the estimates were lower than he expected. Petitioner has never planned dates for any
19 construction, however. He has never done a percolation test, although he did pay the
20 County \$1,000 to determine that there were no archeological sites on his property that
21 would prevent construction.

22 52. Petitioner testified that because a producing well is located on Lot 77, he
23 is confident that he could drill a well on his Lot 76 and find water. He also has a power
24 allowance from APS that would allow him to access electrical power for Lot 76.

25 53. Mr. Wilson testified getting power to Lot 76 would be the easiest part of
26 building. Mr. Wilson testified that there are more dry wells than wells with water in
27 Copper Canyon Ranches.

28 54. Respondent submitted letters from Petitioner dated July 17, 2017, March
29 22, 2017, October 13, 2016, December 1, 2012, and January 18, 2012, complaining to
30 Respondent that the condition of Sundance Lane and the junk on Lot 77 were

1 preventing him from selling his Lot 76.³³ Petitioner also informed Respondent on March
2 30, 2013, that Lot 76 was under contract for sale to a couple named Ramos.³⁴ On
3 December 22, 2009, Petitioner complained about the amount of Respondent's annual
4 assessments, stating that Petitioner had hoped more people would have moved into
5 Copper Canyon Ranches so the POA assessments would have been less because
6 Petitioner lived on a fixed income from social security and needed to save every
7 penny.³⁵

8 55. On September 27, 2017, Mr. Wilson on behalf of Respondent sent a
9 letter to Petitioner, stating in relevant part as follows:

10 You have been complaining to the POA since 2009 about
11 your inability to sell your property. Many properties have
12 been unable to sell due to Rural Rugged area. You sir are
13 the only one blaming the POA and your neighbors for your
14 inability to sell an **undesirable** property. The POA has done
its due diligence in this matter. Please cease complaints to
the POA on this matter.³⁶

15 As noted above, on October 23, 2017, Petitioner filed the petition with the Department.

16 **CONCLUSIONS OF LAW**

17 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization
18 to file a petition with the Department for a hearing concerning violations of planned
19 community documents or violations of statutes that regulate planned communities. That
20 statute provides that such petitions will be heard before the Office of Administrative
21 Hearings.

22 2. Petitioner bears the burden of proof to establish that Respondent violated the
23 CC&Rs by a preponderance of the evidence.³⁷ Respondent bears the burden to establish
24 affirmative defenses by the same evidentiary standard.³⁸

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27 ³³ See Respondent's Exhibit 1 at 9, 11, 14, 18, and 20.

28 ³⁴ See Respondent's Exhibit 1 at 16.

29 ³⁵ See Respondent's Exhibit 1 at 23.

30 ³⁶ Respondent's Exhibit 1 at 10.

³⁷ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74
Ariz. 369, 372, 249 P.2d 837 (1952).

³⁸ See A.A.C. R2-19-119(B)(2).

1 3. "A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not."³⁹ A preponderance of the evidence is
3 "[t]he greater weight of the evidence, not necessarily established by the greater number of
4 witnesses testifying to a fact but by evidence that has the most convincing force; superior
5 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
6 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
7 than the other."⁴⁰

8 4. Section III of the CC&Rs requires Respondent to take such action as is
9 necessary in the reasonable discretion of the members to grade and maintain the 20
10 miles of dirt roads in Copper Canyon Ranches. Petitioner has not established that
11 Respondent abused its discretion by giving higher priority to roads that full-time
12 residents need to access their parcels in light of the limited funds available to
13 Respondent for road maintenance. Respondent established that, in any event,
14 Petitioner's Lot 76 (as well as adjacent Lot 77) are accessible via passenger car from
15 the southern end of Sundance Lane. Respondent established that in most years, it
16 blades the south and north ends of Sundance Lane twice a year.

17 5. CC&Rs must be construed to avoid an absurdity.⁴¹ Respondent established
18 that the Board has done all it could to maintain all 20 miles of dirt roads for which is
19 responsible, given its limited resources. Because the Board has done all it could to
20 maintain the 20 miles of dirt roads in Copper Canyon Ranches, reasonably giving
21 priority to maintaining the better roads on which residents actually currently live,
22 Petitioner's complaint about Respondent's failure to maintain Sundance Lane should be
23 dismissed.

24 6. Petitioner did not establish that there is more than one inoperable vehicle on
25 Lot 77 or that, if there were trash or other violations of Section VI of the CC&Rs, it was
26 more than a transitory condition. Respondent established that it monitors Lot 77 and,
27 when appropriate, calls Lot 77's owner Mr. Hamlin's to violations of CC&R Section VI
28 and that Mr. Hamlin is generally responsive. Copper Canyon Ranches consists of large

29 ³⁹ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ⁴⁰ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁴¹ See *Mail Boxes v. Industrial Comm'n of Arizona*, 181 Ariz. 119, 122, 888 P.2d 777, 780 (1995).

1 parcels located in a remote rural area and the CC&Rs require a buffer between adjacent
2 parcels under most circumstances. The CC&Rs also contemplate that parcel owners
3 will have vehicles and other stored items on their parcels, as is common in remote rural
4 areas. Respondent established that the storage and vehicles on Lot 77 occur behind
5 the buffer zone and are not easily visible from Petitioner's Lot 76 without binoculars or a
6 telephoto lens. Therefore, Petitioner's complaint about Respondent's failure to enforce
7 the CC&Rs against Lot 77 should be dismissed.

8 **RECOMMENDED ORDER**

9 In view of the foregoing, it is ORDERED that Petitioner's petition in this matter is
10 denied. Pursuant to A.R.S. § 32-2199.02(B), this Order is binding on the parties unless
11 a rehearing is granted pursuant to A.R.S. § 32-2199.04 based on a petition setting forth
12 the reasons for the request for rehearing, in which case the order issued at the
13 conclusion of the rehearing would be binding on the parties.

14 *In the event of certification of the Administrative Law Judge Decision by the*
15 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
16 *five days from the date of that certification.*

17 Done this day, January 24, 2018.

18 /s/ Diane Mihalsky
19 Administrative Law Judge

20 Transmitted electronically to:

21 Judy Lowe, Commissioner
22 Arizona Department of Real Estate
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